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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1963.

No. 415

HARRY IRWIN, HARRY NITZSCHE, JAMES ROGERS, JOHN FINN, TONY AVOLA, PETER HECKE, KARL ZAPF, WALTER WILLIAMS, MURVALE GUIBOR, THOMAS LaROCCA, BERNARD ANSELMO, DANIEL MORIARITY, MICHAEL BUFFA, ELMER SHIRLEY, JOHN MANGIAPANELLO, RAYMOND BUDO and HENRY LANE,
Petitioners,

vs.

GLOBE-DEMOCRAT PUBLISHING COMPANY, a Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Missouri.

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ST. LOUIS LAW PRINTING CO., INC. 415 N. Eighth Street. CEntral 1-4477.

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PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Missouri.

To the Honorable The Supreme Court of the United States of America:

Petitioners respectfully petition this Honorable Court to grant the Writ of Certiorari to the Supreme Court of Missouri in the above case. In this behalf, petitioners show unto the Court:

OPINION OF THE COURT BELOW.

Harry Irwin, Harry Nitzsche, James Rogers, John Finn, Tony Avola, Peter Hecke, Karl Zapf, Walter Williams, Murvale Guibor, Thomas LaRocca, Bernard Anselmo, Daniel Moriarity, Michael Buffa, Elmer Shirley, John Mangiapanello, Raymond Budo and Henry Lane, Plaintiffs (Respondents) v. Globe-Democrat Publishing Company, a corporation, Defendant (Appellant).

The opinion of the Supreme Court of Missouri is reported at 368 S. W. (2) 452; Motion for Rehearing, Or, To Transfer to Court En Banc Denied, ibid, 458, and it is set out verbatim in Appendix A.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

The jurisdiction of this Court is based upon the Act of Congress of June 25, 1948, c. 646, Sec. 1, 62 Stat. 929, Title 28, U. S. Code, Sec. 1257. (3) providing that this Court may, by writ of certiorari, review any final judgment or decree rendered by the highest court of a state in which a decision could be had, where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, The United States.

Judgment of the Supreme Court of Missouri, Division No. 2, sought to be reviewed, was entered on the 8th day of April, 1963 (R. 592) and is set out in Appendix B.

Thereafter on the 23rd day of April, 1963, the petitioners filed a Motion for Rehearing, or, in the Alternative, for Transfer to the Court En Banc (R. 604) and Suggestions in support of said Motion (R. 604) and these are completely set out as Appendices C and D.

Thereafter on the 4th day of June, 1963, the Supreme Court of Missouri overruled petitioners' motion for rehearing and overruled petitioners' motion to transfer to the court en banc, and said judgment then became final (R. 627). The order overruling said motions is contained in Appendix E.

Motion to recall mandate sent down to the trial court reversing judgment of the trial court was allowed by the Supreme Court on August 7, 1963. This order extends the recall 90 days from June 4, 1963; a certified copy of same is filed separately with transcript and exhibits.

Division No. 2 of the Supreme Court of Missouri upon its refusal to transfer the cause to the court en banc was the highest court of the state in which a decision could be had in said cause; and by reason of the decision rendered by the said court it is claimed petitioners' rights have been contravened under the Fourteenth Amendment to the United States Constitution; Sec. 304, (a) of the Labor Management Relations Act of 1947, 29 U. S. C. A., Section 185 (a); the Seventh Amendment to the United States Constitution and applicable decisions of this court.

QUESTIONS PRESENTED FOR REVIEW.

1. Whether, the state court erred as a matter of federal substantive law in construing a collective bargaining agreement and in deciding as a matter of law on April 8, 1963, that respondent-employer in an industry affecting commerce had not violated its provisions, thereby reversing a prior jury verdict in favor of petitioners who, as individual employees; charged violation of the agreement by reason of employer's failure to pay them "dismissal pay" under that clause of the agreement which provided such pay to an employee "laid off to reduce the force", and, who submitted their charge on that theory.

2. Whether, under the circumstances and federal standards aforesaid, the state court usurped the function of the jury by re-examining the facts and reversing the judgment entered thereon and by holding that the circumstances of the case did not warrant the finding that petitioners were "laid off to reduce the force" but rather were "discharged" and that no obligation for such dismissal payment existed.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The constitutional provisions involved are:

The Fourteenth Amendment, United States Constitution (Appendix F);

The Seventh Amendment, United States Constitution (Appendix G).

The Statutes involved are:

29 U. S. C. A., Sec. 185 (a), Section 301 (a), The Labor Management Relations Act of 1947 (Appendix H);

28 U. S. C. A., Sec. 1257, June 25, 1948, c. 646, 62 Stat. 929 (Appendix I).

STAGE, MANNER AND METHOD OF RAISING THE FEDERAL QUESTION.

Petitioner's first assignment of error was not raised until after the state appellate court ruling. Then, by motion for rehearing, or in the alternative, for transfer to the court en banc and suggestions filed in support thereof, the Federal questions sought to be reviewed were expressly raised.

The outright reversal of April 8, 1963 came eleven months after the case was argued and submitted to the state appellate court on May 1, 1962. This is significant

because during this interim the United States Supreme Court decided,* on December 10, 1962, that under Section 301 (a) of the Labor Management Relations Act of 1947, federal law is applicable to suits initiated by individuals in state courts for violation of collective bargaining agreements.

Because of this new complexion in the field of labor relations which came into being after this cause was argued and submitted to the state appellate court, it became necessary to view the reversal in this new light. The first opportunity to do this was in petitioner's Motion for Rehearing, etc., and Suggestions (R. 604) in which five points are raised, the four below forming the basis for the questions presented here for review.

1. The opinion of the state court has contravened Section 1 of the Fourteenth Amendment to the United States Constitution (Motion for Rehearing, paragraph 2, page 2, or (R. 606, 611). This was not discussed by the state court in its opinion, nonetheless must be taken as overruled along with the entire motion.

2. By its opinion the state court does not take into account Section 301 (a) of The Labor Management Relations Act of 1947 [29 U. S. Code, Section 185 (a)]. Motion for Rehearing, paragraph 2A, page 2, or (R. 606, 611, 612). This was discussed by the state court at 368 S. W. 2d, l. c. 458, 459, and overruled.

3. The state court's opinion has contravened the Seventh Amendment to the Constitution of the United States. Motion for Rehearing, paragraph 3, page 2, or (R. 606).

4. The state court's opinion has usurped respondent's (petitioner's) right to a trial by jury. (Motion

* Smith v. Evening News Ass'n, 371 U. S. 195, 83 S. Ct. 267.